



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF BENEDEJČIČ AND TRATNIK v. SLOVENIA

(Application no. 39178/02)

JUDGMENT

STRASBOURG

27 April 2006

FINAL

27/07/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Benedejčič and Tratnik v. Slovenia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J. HEDIGAN, *President*,
Mr B.M. ZUPANČIČ,
Mr L. CAFLISCH,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 6 April 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 39178/02) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Slovenian nationals, Mrs Štefka Benedejčič and Mrs Jožefa Tratnik (“the applicants”), on 22 October 2002.

2. The applicants were represented by the Verstovšek lawyers. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicants alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which they were a party was excessive. In substance, they also complained about the lack of an effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 15 September 2004 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicants were born in 1913 and 1919 respectively and live in Šentjur and Pečovnik respectively.

6. On 22 March 1996 the applicants instituted civil proceedings against their sister’s niece, E. L., in the Celje District Court (*Okrožno sodišče v*

Celju), claiming the invalidity of their sister's written will and seeking a recovery of the amount of 1,786,000 Slovenian tolar (approximately 7,450 euros).

Between 29 August 1997 and 25 October 2002 the applicant lodged eight preliminary written submissions.

On 28 September 2001 and 7 February 2002 they made requests that a date be set for a hearing.

Of the six hearings held between 4 September 1997 and 21 November 2002, none was adjured at the applicants' request.

During the proceedings, the court appointed a graphologist and a financial expert. It also made several inquiries into a financial situation of the applicants' deceased sister and examined the second applicant at her home and the first applicant at the Home for the Elderly.

At the last hearing, the court decided to deliver a written judgment. The judgment, rejecting the applicants' claim, was served on the applicants on 23 January 2003.

7. On 31 January 2003 the applicants appealed to the Celje Higher Court (*Višje sodišče v Celju*). E. L. cross-appealed.

On 30 September 2004 the court dismissed both appeals.

The judgment was served on the applicants on 13 October 2004.

8. On 11 November 2004 the applicants lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 16 February 2006 the court dismissed the applicant's appeal.

The decision was served on the applicant on 17 March 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

9. The applicants complained about the excessive length of the proceedings. They relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

10. In substance, the applicants further complained that the remedies available for excessive legal proceedings in Slovenia were ineffective. Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

11. The Government pleaded non-exhaustion of domestic remedies.

12. The applicants contested that argument, claiming that the remedies available were not effective.

13. The Court notes that the present application is similar to the cases of *Belinger* and *Lukenda* (*Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001, and *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005). In those cases the Court dismissed the Government's objection of non-exhaustion of domestic remedies because it found that the legal remedies at the applicants' disposal were ineffective. The Court recalls its findings in the *Lukenda* judgment that the violation of the right to a trial within a reasonable time is a systemic problem resulting from inadequate legislation and inefficiency in the administration of justice.

14. As regards the instant case, the Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish it from its established case-law.

15. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 § 1

16. The period to be taken into consideration began on 22 March 1996, the day the applicants instituted proceedings with the Celje District Court, and ended on 17 March 2006, the day the Supreme Court's decision was served on the applicant. The relevant period has therefore lasted about ten years for three levels of jurisdiction.

17. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

18. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

There has accordingly been a breach of Article 6 § 1.

2. Article 13

19. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government have been rejected in earlier cases (see *Lukenda*, cited above) and sees no reason to reach a different conclusion in the present case.

20. Accordingly, the Court considers that in the present case there has been a violation of Article 13 on account of the lack of a remedy under domestic law whereby the applicants could have obtained a ruling upholding their right to have their case heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

22. Each of the applicants claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government contested the claim.

24. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each of the applicants EUR 6,400 under that head.

B. Costs and expenses

25. The applicants also claimed approximately EUR 2,160 for the costs and expenses incurred before the Court.

26. The Government argued that the claim was too high.

27. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court also notes that the applicants' lawyers, who also represented the applicant in *Lukenda* (cited above), lodged nearly 400 applications which, apart from the facts, are essentially the same as this one. Accordingly, in the present case, regard being had to the information in

its possession and the above criteria, the Court considers it reasonable to award the applicants the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

28. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,400 (six thousand four hundred euros) in respect of non-pecuniary damage and to the applicants jointly EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President